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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/608,802	06/30/2000	Martin Cieslak	CISCP146	2424
22434	7590	09/20/2005		
BEYER WEAVER & THOMAS LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER CARDONE, JASON D	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/608,802

Applicant(s)

CIESLAK ET AL.

Examiner

Jason D. Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35,37-73 and 75-82 is/are pending in the application.
- 4a) Of the above claim(s) 20-35,37-39,58-73,75-77,79,81 and 82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19,40-57,78 and 80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the remarks of the applicant, filed on 7/6/05. Claims 1-35, 37-73 and 75-82 are presented.

2. Claims 20-35, 37-39, 58-73, 75-77, 79, 81 and 82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/6/05.

3. Applicant's election with traverse of Group I in the reply filed on 7/6/05 is acknowledged. The traversal is on the ground(s) that undue burden on the previous Examiner and group II and III should not be restricted. This is not found persuasive because the present Examiner has burden to exam all the groups within the claims, unlike the previous examiner and group II and III should be restricted because they are subcombination of each other, 709/246 can deal with adding/deleting packets in a packet flow.

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 1-19, 40-57, 78 and 80 are presented for further prosecution.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 78 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim discloses computer program product. The computer program product is not tangibly limited to a product that is within and enabled by the specification. Claim 78 is not limited to tangible embodiments. In view of Applicant's disclosure, specification page 24, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., floppy disk) and intangible embodiments (e.g., carrier waves). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-12 of USPN 6,240,461 contains every element of claims 1-19, 40-57, 78 and 80 of the instant application and as such anticipates claims 1-19, 40-57, 78 and 80 of the instant application. Claims 1-10 of USPN 6,683,873 contains every element of claims 1-19, 40-57, 78 and 80 of the instant application and as such anticipates claims 1-19, 40-57, 78 and 80 of the instant application. "A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); *In re Berg*, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " *ELI LILLY AND COMPANY v BARR LABORATORIES, INC.*, United States

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Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC
(DECIDED: May 30, 2001).

11. Claims 1-19, 40-57, 78 and 80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 09/608,548 and claims 1-6 of copending Application No. 09/527,085. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-19, 40-57, 78 and 80 are rejected under 35 U.S.C. 102(e) as being anticipated by Yates et al. ("Yates"), USPN 6,167,438.

14. Regarding claim 1, Yates discloses a method of facilitating redirection of traffic sent from a first processing device to a second processing device, the method comprising:

at a third processing device associated with a plurality of traffic handling systems, receiving traffic information from one or more of the associated traffic handling systems, wherein the traffic information specifies which traffic should be redirected to the one or more of associated traffic handling systems [ie. router, Yates, col. 4, lines 40-59, col. 7, lines 28-56, col. 8, line 55 – col. 9, line 14 and col. 12, lines 35-67]; and determining how to redirect traffic received by the third processing device to a selected traffic handling system based on the received traffic information [Yates, col. 8, line 55 – col. 9, line 14].

15. Regarding claim 2, Yates further discloses wherein the determination of redirecting data is accomplished by: communicating the traffic information to at least a designated one of the associated traffic handling systems; and at the third processing device, receiving traffic redirection information from the designated traffic handling system, the traffic redirection information being based on the communicated traffic information [Yates, col. 8, line 55 – col. 9, line 14 and col. 12, lines 35-67].

16. Regarding claim 3, Yates further discloses at the third processing device, building or updating a data structure based on the received traffic information, wherein

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the traffic information is communicated to the designated traffic handling system within the data structure [Yates, col. 15, line 1 – col. 16, line 28].

17. Regarding claims 4-6 and 15, Yates further discloses in the third processing device, receiving a packet from the first processing device destined for the second processing device; and redirecting the packet to a selected one of the traffic handling systems based on the traffic redirection information, receiving the packet back after redirecting it to the selected traffic handling system [Yates, col. 4, lines 40-59, col. 7, lines 28-56, col. 8, line 55 – col. 9, line 14 and col. 12, lines 35-67]; determining that the packet is to be sent to the packet's original destination address instead of being redirected to the selected traffic handling system; and sending the packet to its original destination, wherein it is determined that the packet is to be sent to the packet's original destination by determining that the packet is encapsulated and de-encapsulating the packet prior to sending the packet to its original destination and receiving a packet from the first processing device destined for the second processing device [Yates, col. 18, lines 21-43]; and when one or more port identifiers of the received packet matches a corresponding set field of the service options of the selected traffic handling system, redirecting the packet to the selected traffic handling system [Yates, col. 4, lines 40-59 and col. 12, lines 54-67].

18. Regarding claim 7, Yates further discloses the traffic information sent from a selected traffic handling system to the third processing device includes service options

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specifying which data is to be redirected to the selected traffic handling system [Yates, col. 8, line 55 – col. 9, line 14].

19. Regarding claim 8, Yates further discloses the service options include a plurality of fields that are configurable to indicate that one or more fields of a packet received in the third processing device are to be used to determined redirection of packets to the selected traffic handling system [Yates, col. 8, line 55 – col. 9, line 14].

20. Regarding claim 9, Yates further discloses the fields are selected from a group consisting of a source IP field, a destination IP field a source port field, a destination port field, a source IP alternative field, a destination IP alternative field, a source port alternative field, and a destination port alternative field [Yates, col. 12, lines 35-67].

21. Regarding claims 10 and 11, Yates further discloses each field indicates that a corresponding field of a packet received in the third processing device is to be used to generate an index to a table identifying the plurality of associated traffic handling systems, the generated index being associated with the selected traffic handling system, wherein each field indicates that a hashed value of the corresponding field of the received packet is to be used to generate the index to the table identifying the plurality of associated traffic handling systems [Yates, col. 15, line 1 – col. 16, line 28].

22. Regarding claim 12, Yates further discloses at least one of the fields

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may be set to indicate one or more port identifiers of traffic received in the third processing device [Yates, col. 15, line 1 – col. 16, line 28].

23. Regarding claims 13 and 14, Yates further discloses the fields are selected from a group consisting of a port fields, wherein the fields includes a source/destination field to indicate whether the port identifiers of the received traffic are source ports or destination ports [Yates, col. 12, lines 35-67].

24. Regarding claims 16-18, Yates further discloses the traffic information sent from a selected traffic handling system to the third processing device includes security options for specifying an authentication level for messages communicated between the third processing device and the selected traffic handling system, wherein the security options are configurable to select no authentication for messages communicated between the third processing device and the selected traffic handling system and to require a predetermined password encoded within messages communicated between the third processing device and the selected traffic handling system [Yates, col. 4, line 60 – col. 5, lines 11].


25. Regarding claim 19, Yates further discloses the traffic information sent from a selected traffic handling system includes identifying information for the selected traffic handling system [Yates, col. 4, lines 1-26].

26. Regarding claims 40-57, 78 and 80, claims 40-57, 78 and 80 have similar limitations as claims 1-19. Therefore, the similar limitations are disclosed under Yates for the same reasons set forth in the rejection of claims 1-19 [Supra 1-19].

Conclusion

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Thu. (6AM-3PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jason D Cardone
Primary Examiner
Art Unit 2145

September 19, 2005